

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5075 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MTZ POLYESTERS LTD.

Versus

STATE OF GUJARAT

Appearance:

MR MIHIR H JOSHI for Petitioners
MR TRIVEDI, APP, for Respondent No. 1
MR KP SHAH for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/07/1999

ORAL JUDGEMENT

Heard Mr. M.H. Joshi, learned advocate for the
petitioners, Mr. Trivedi, learned Additional Public
Prosecutor respondent No.1 and Mr. Chetan Pandya for Mr.
K.P. Shah, learned advocate for respondent No.2.

Mr. Joshi, learned advocate for the petitioners

states that the complaint is not maintainable as when the stop payment was directed, the petitioner had a credit balance of Rs.82,11,763/- and a minimum balance of Rs.62,83,051 and, therefore, in light of decision of this Court rendered in M/s. Dadu Silk Mills & Ors. v. Indian Overseas Bank, reported in 1995 (1) GLH 458, this would not constitute an offence under Section 138 of the Negotiable Instruments Act and the complaint, therefore, deserves to be quashed. He, however, states that the parties had a series of commercial transactions and there was some dispute about the quantum of liability and now that dispute is settled and the petitioner is handing over a draft bearing No.070221 dated 7.7.1999 for Rs.5,30,000/-, drawn on Standard Chartered Bank, in full and final settlement of the dues of respondent No.2 from the petitioner. Mr. Chetan Pandya appearing for respondent No.2 states that respondent No.2 accepts this amount in full and final settlement of the dues from the petitioner. Mr. Pandya further states that respondent No.2 does not seriously contest this petition, in view of the fact that draft to the tune of Rs.5,30,000/- is received.

It is undisputed fact that the cheque in question was dishonoured on account of instruction of 'stop payment' by the petitioner. It is also undisputed that there was sufficient balance in the bank at the time when the cheque was presented and but for the instructions of stop payment, the cheque would have been honoured in ordinary course. Under the circumstances, the dishonour of cheque would be said to fall within the mischief of Section 138 of the Negotiable Instruments Act. The complaint, therefore, deserves to be quashed and is, hereby, quashed. Rule is made absolute.

[A.L. DAVE, J.]

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